STATE OF INDIANA	,	ARION COUNTY	COURT
COUNTY OF MARION) SS:) CAUSE NO	O	
STATE OF INDIANA,)	49D12 07 (06 PL 0 26809
Plaintiff,)		
v.)	FILE	D
MICHELLE R. DZERVE, indiv	vidually and doing)	(15)	U
business as, Choice OK Used C	•	15) JUN 28 20	167
Defendant.)	CLERK OF THE MARION CIRC	

COMPLAINT FOR INJUNCTION, RESTITUTION, CIVIL PENALTIES AND COSTS

The State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Mary Ann Wehmueller, petitions the Court pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code §24-5-0.5-1 *et seq.*, for injunctive relief, consumer restitution, civil penalties, investigative costs, and other relief.

PARTIES

1. Defendant Michelle Dzerve is an individual doing business as Choice OK Used Cars, with a principal place of business in Marion County located at 3315 Madison Avenue, Indianapolis, Indiana. At all relevant times the Defendant has engaged in the retail sale of used motor vehicles.

FACTS

TITLE NON-DELIVERY ALLEGATIONS

2. At least since March 20, 2006, the Defendant has sold used motor vehicles to consumers, including but not limited to:

CONSUMER	SALE <u>DATE</u>	<u>VEHICLE ID</u>	AMT PAID
a) Ahnert, Frank	1/8/2007	2000 Mitsubishi	\$ 8,850.00
b) Bonthu, Varun Kumar	1/22/2007	1996 Audi	\$ 4,600.00
c) Greis, Timothy	1/19/2007	1999 BMW	\$ 6,834.00
d) Harvey-Young, Robin	2/27/2007	1999 Jeep	\$ 4,290.00
e) Hoskins, Tony R.	2/6/2007	1999 Mer-Benz	\$ 9,800.00
f) Lott, Brian	3/16/2007	2001 Kia	\$ 5,880.00
g) Miller, Kerry	2/7/2007	2001 Land Rover	\$ 8,300.00
h) Tanasovich, Joseph	2/7/2007	1997 Jeep	\$ 5,191.00
i) Vining, Ian	1/29/2007	1998 Dodge	\$ 5,032.00

- 3. True and accurate copies of the Purchase Orders for the vehicles purchased by the consumers identified in paragraph 2(a) through 2(i) are attached and marked as Exhibits "A" through "I" respectively.
- 4. The Defendant accepted initial payments and/or down payments from the consumers identified in paragraph 2, and accepted payment in full for these vehicles from or on behalf of the consumers identified therein.

- 5. The Defendant did not possess titles for the vehicles described in paragraph 2 on the vehicles' respective dates of sale.
- 6. The Defendant failed to deliver vehicle titles on the dates of sale to the consumers identified in paragraph 2.
- 7. On the respective dates of sale, the Defendant failed to provide consumers Hoskins and Miller with affidavits as required by Ind. Code §9-17-3-3.5.
- 8. On the dates of sale to consumers Hoskins and Miller, the Defendant represented to Hoskins and Miller, that she would deliver vehicle titles to the consumers or to their respective lienholders.
- 9. The Defendant provided consumer Ahnert with an affidavit as required by Ind. Code §9-17-3-3.5, stating Defendant would deliver title to Ahnert on or before February 20, 2007.
- 10. The Defendant provided consumer Bonthu with an affidavit as required by Ind. Code §9-17-3-3.5, stating Defendant would deliver title to Bonthu on or before February 23, 2007.
- The Defendant provided consumer Greis with an affidavit as required by Ind.Code §9-17-3-3.5, stating Defendant would deliver title to Greis on or before February 20, 2007.
- 12. The Defendant provided consumer Harvey-Young with an affidavit as required by Ind. Code §9-17-3-3.5, stating Defendant would deliver title to Harvey-Young on or before March 18, 2007.
- 13. The Defendant provided consumer Lott with an affidavit as required by Ind. Code \$9-17-3-3.5, stating Defendant would deliver title to Lott on or before April 17, 2007.

- 14. The Defendant provided consumer Tanasovich with an affidavit as required by Ind. Code §9-17-3-3.5, stating Defendant would deliver title to Tanasovich on or before February 7, 2007.
- 15. The Defendant provided consumer Vining with an affidavit as required by Ind. Code §9-17-3-3.5, stating Defendant would deliver title to Vining on or before March 1, 2007.
- 16. To date, the Defendant has failed to deliver titles to the consumers identified in paragraph 2.
- 17. The Defendant knew or should have known she could not deliver titles to the consumers identified in paragraph 2 as represented.

COUNT I <u>VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT</u>

- 18. The transactions identified in paragraphs 2 are "consumer transactions" as defined by Ind. Code §24-5-0.5-2(1).
 - 19. Defendant Michelle Dzerve is a "supplier" as defined in Ind. Code §24-5-0.5-2(3).
- 20. The Defendant's representations referred to in paragraphs 8, 9, 10, 11, 12, 13, 14, and 15 violate the Indiana Deceptive Consumer Sales Act, Ind. Code §24-5-0.5-1 *et seq.* as follows:
 - (a) the Defendant and/or her agents misrepresented the characteristics and benefits of consumer transactions, to wit: that the Defendant would provide consumers with titles for vehicles purchased from the Defendant, in violation of Ind. Code §24-5-0.5-3(a)(1).
 - (b) the Defendant misrepresented warranty of title in violation of Ind. Code § 24-5-0.5-3(a)(8);

- (c) the Defendant misrepresented she would deliver vehicle titles, within a stated or reasonable period of time in violation of Ind. Code § 24-5-0.5-3(a)(10).
- 21. On the dates of sale identified in paragraphs 2, Defendant Dzerve knew or should have known that she did not possess and could not deliver titles to the respective consumers. The Defendant intentionally or with reckless disregard sold vehicles and continued to sell vehicles without obtaining and delivering vehicle titles.

COUNT II VIOLATIONS OF TITLE DELIVERY STATUTE

- 22. Plaintiff realleges paragraphs 1 through 21.
- 23. The Defendant's failure to deliver a vehicle title to each consumer identified in paragraph 2, violates Ind. Code §9-17-3-3.

COUNT III INCURABLE DECEPTIVE ACTS

- 24. Plaintiff realleges paragraphs 1 through 23.
- 25. The Defendant's representations constitute incurable deceptive acts and are actionable by the Attorney General pursuant to Ind. Code §24-5-0.5-1 *et seq*.

IRREPARABLE INJURY

26. The misrepresentations set forth above will continue and will cause irreparable injury unless the Defendant Michelle Dzerve is enjoined from engaging in further conduct in violation of Ind. Code §24-5-0.5-1 *et seq*.

RELIEF

WHEREFORE, Plaintiff, State of Indiana, requests that the Court enter judgment against the Defendant Michelle Dzerve as follows:

- a. A permanent injunction pursuant to Ind. Code §24-5-0.5-4(c) (1), enjoining Michelle Dzerve, her agents, representatives, employees, successors, and assigns, from:
 - (1) misrepresenting the characteristics and benefits of vehicle sales transactions in violation of Ind. Code §24-5-0.5-3(a)(1);
 - (2) selling motor vehicles without delivering vehicle titles as required by Ind. Code §9-17-3-3; and,
 - (3) misrepresenting her ability to complete the subject of a consumer transaction within a stated or reasonable period of time;
- b. Cancellation of contracts pursuant to Ind. Code §24-5-0.5-4(d);
- c. Consumer restitution pursuant to Ind. Code §24-5-0.5-4(c)(2), in the form of a Court Order directing the Indiana Bureau of Motor Vehicles to issue titles for the vehicles identified in paragraph 2, to the specified consumers and/or their lienholders;
- d. Costs pursuant to Ind. Code §24-5-0.5-4(c) (3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;
- g. Civil penalties pursuant to Ind. Code §24-5-0.5-4(g) on Count I of the Plaintiff's complaint, for the Defendants' knowing violations of Ind. Code §24-5-0.5-3(a) (1); (a) (8); (a) (10) and Ind. Code §9-17-3-3, in the amount \$5,000.00 per violation, payable to the State of Indiana;
- h. Civil penalties pursuant to Ind. Code §24-5-0.5-8 on Count III of the Plaintiff's complaint, for the Defendants' intentional violations of Ind. Code §24-5-0.5-

3(a) (1); (a) (8); (a) (10) and Ind. Code §9-17-3-3, in the amount of \$500.00 per violation, payable to the State of Indiana; and

i. All other proper relief.

Respectfully submitted,

STEVE CARTER

Indiana Attorney General

Atty. No. 4150-64

By:

Mary And Wehmueller Deputy Attorney General Atty. No. 0015251-49A

Office of Attorney General Indiana Government Center South 302 W. Washington St., 5th Floor Indianapolis, IN 46204 Telephone: (317) 233-3973

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